

Assum-Dahleen, Laura

From: Assum-Dahleen, Laura
Sent: Friday, September 18, 2009 5:07 PM
To: 'Judy Aranda'
Subject: FW: Programmatic Agreement - Meeting Minutes and Agenda for Monday

From: Assum-Dahleen, Laura
Sent: Friday, September 18, 2009 4:50 PM
To: 'Jeff'; 'Amy Blagriff'; 'aspencer@hawaii.edu'; 'Kiersten Faulkner'; 'katie@historichawaii.org'; 'chazinhawaii@aol.com'; 'Sherry Campagna'; 'frank_hays@nps.gov'; 'Elaine_Jackson-Retondo@nps.gov'; 'Melia_Lane-Kamahele@nps.gov'; 'Hinaleimoana Falemei'; 'Kehau Abad'; 'Kawika McKeague'; 'pua.aiu@hawaii.gov'; 'Nancy.A.McMahon@hawaii.gov'; 'Susan.Y.Tasaki@hawaii.gov'; 'Blythe Semmer'; 'theodore.matley@fta.dot.gov'; 'james.barr@fta.dot.gov'; 'deepak@hcdaweb.org'; 'keolal@oha.org'; 'malamapono@aol.com'; 'lani@aukahi.com'; 'Brian_Turner@nthp.org'; 'Elizabeth_Merritt@nthp.org'; 'john.muraoka@navy.mil'; 'pamela.takara@navy.mil'; 'Ware, Terrance'; 'Sokugawa, Kathy K.'; 'mmcdermott@culturalsurveys.com'; 'hhammatt@culturalsurveys.com'; 'arakimataemon@aol.com'; 'halealoha@wave.hicv.net'
Cc: Spurgeon, Lawrence; Foell, Stephanie; 'Faith Miyamoto (Honolulu DTS)'; 'rtam1@honolulu.gov'; 'kpatterson@honolulu.gov'; 'Judy Aranda'; Hogan, Steven
Subject: Programmatic Agreement - Meeting Minutes and Agenda for Monday

Aloha Section 106 Consulting Parties,

Attached are the meeting minutes (separate from the Facilitator Notes) from the meetings held on September 2, September 3 and September 11 and the Agenda for Monday's meeting.

Mahalo!

10/27/2009

AR00061016

**Honolulu High-Capacity Transit Corridor Project
Programmatic Agreement Between the Federal Transit Administration,
Hawaii State Historic Preservation Office and Advisory Council on
Historic Preservation**

**Section 106 Consulting Parties Meeting
PB Americas Office, 1001 Bishop Street, Suite 2400
Monday, September 21, 2009
8:30 a.m.**

Agenda

- A. Welcome and Introductions
- B. Meeting Purpose and Groundrules
- C. Agenda Review
- D. Review of Updated Programmatic Agreement
- E. Next Steps

Telephone Access: 1-888-742-8686, ID 3784294

**Honolulu High-Capacity Transit Corridor Project
Programmatic Agreement Between the Federal Transit Administration,
Hawaii State Historic Preservation Officer and Advisory Council on Historic
Preservation**

Section 106 Consulting Parties Meeting – No. 6

PB Americas Office, 1001 Bishop Street, Suite 2400
Monday, September 21, 2009
8:30 a.m.

Meeting Notes

Attendees

ACHP - Blythe Semmer (call-in)
AIA Honolulu - Spencer Leineweber
City Corporation Counsel: Jesse Souki
City Department of Planning and Permitting (DPP): Terrance Ware, Kathy Sokugawa
(call-in), Terrance came in for last few minutes of meeting)
FTA: Ted Matley, Jim Barr, Carl Bausch (all call-in)
Association of Hawaiian Civic Clubs: Mahealani Cypher
Historic Hawaii Foundation (HHF) - Katie Kastner, Kiersten Faulkner
National Trust for Historic Preservation (NTHP) - Betsy Merritt, Brian Turner (call-in)
National Park Service, Pacific West Region – Frank Hays
Native Hawaiian Legal Corp. (NHLCC) - David Kimo Frankel
Oahu Island Burial Council (OIBC) – Kehau Abad, Kawika McKeague
RTD Project Team: Faith Miyamoto, Lawrence Spurgeon, Stephanie Foell (call-in),
Steve Hogan, Nalani Dahl, Judy Aranda, Lani Lapilio, Kaleo Patterson, Ryan Tam
State Historic Preservation Division – Pua Aiu, Susan Tasaki (call-in)
Prince Kuhio Hawaiian Civic Club – Mary Fiecker
Hui Malama I Na Kupuna O Hawaii Nei – Halealoha Ayau, Konia Frietas, Melva Aila,
William Aila

Moderator: Leland Chang

- A. **Welcome and Introductions**
 - Leland Chang welcomed the consulting party (CP) participants and agencies.
 - Self introductions were made by each representative.
- B. **Meeting Purpose [Leland Chang]**
 - The purpose of this meeting is to continue consultation with CPs to review the current Draft of the Programmatic Agreement and work toward finalization.
- C. **Review of Updated Programmatic Agreement [Leland Chang]**
 - **General Comments**

ACHP We should come to an agreement on the overall concept of the Programmatic Agreement (PA) before we move forward by asking ourselves the following questions:

- What is the goal of the PA in relationship to the project?
- What do we have in place and what do we have yet to realize?
- The purpose of the PA is to set a process in place for implementing the project and identifying its effect on Historic Resources.
- We have the opportunity to create a system to manage implementation and ensure how CPs will be involved in implementation and with work in progress and to memorialize mitigation measures that have already been agreed upon.

FTA FTA's role in this process is to bring together those interested in or affected by the project and to ensure mitigation is methodological and that concrete measures on the ground will make a difference. The current agreement has made good progress, and FTA hopes to wrap up the PA today and move forward.

Project Team The current version of the PA (9/16/09) has been restructured to follow the recommended reformatting requested by the ACHP. Input from ACHP, SHPD, HHF and others has been taken seriously and has resulted in substantial changes to the PA. The intent is to specifically address all issues that are within the project's scope and authority. We appreciate everyone's review to be sure we are still on track with our wording for intent.

▪ **Title**

NTHP Does the City and County of Honolulu need to be listed in the title?

ACHP There is no requirement for the City to be included in the title.

TITLE: RESOLUTION / ACTION

None

▪ **Whereas Clauses**

Project Team There are three new "Whereas" clauses for review.

NHLC There are no burial sites listed in the Whereas clause concerning Resources on page 3, however, the DEIS states that there are burial sites in the project corridor.

Project Team Although burial sites may be in the corridor, there are no known burials affected by the project. However, archeological surveys will be completed during the project to identify these resources.

NHLC Is the intent to enter into the PA prior to completion of the various studies specified in the PA?

Project Team The purpose of the PA is to set down the guidelines.

OIBC A solution to our concerns would be a phased approach based on the type of study, not necessarily the geographic location. Some archaeological work must be completed prior to the onset of the project to ensure that we comply with the spirit of the PA.

HHF City and County as a whole (not just DTS) should sign the PA, committing on the City's behalf.

FTA Suggested language: add Whereas clause: "Whereas, the City & County of Honolulu has adopted this agreement by resolution ..."
This should lend authority to the PA.

Counsel DTS will adopt the PA not the City and County.

HHF What happens if DTS agrees to something that is out of their control?

Project Team DTS makes the agreement and bears the responsibility to implement through coordination with other departments as appropriate.

Counsel We will investigate internally to see what the City is willing to do (i.e., possibility of the Mayor signing the PA).

WHEREAS CLAUSES: RESOLUTION / ACTION

1. Project team will investigate who can / will sign for City.

▪ I. Roles and Responsibilities

OIBC OIBC received a letter from Leslie Rogers of the FTA and was advised of its status as consulting party rather than an invited signatory. It is the OIBC's responsibility to enforce the terms of the PA as it pertains to new burial sites found. If OIBC is

not an invited signatory what happens to its jurisdictional responsibility? OIBC's concern is not about enforcement per se. Suggest a new Whereas clause (NEED SPECIFICS FROM KEHAU).

- FTA We have no comment on the suggestion as we do not support OIBC as an invited signatory.
- HHF Why do you object to having the OIBC sign the agreement?
- FTA The draft PA, as written, states that if human remains are uncovered work will cease, and project will be modified or the remains reinterred. There is a mechanism in place to deal with the issue and FTA finds this sufficient.
- OIBC To emphasize, OIBC has the sole authority and responsibility to determine the disposition of new remains. Any given burial may remain in place. We are trying to avoid the potential eventuality that we have no options to effectively mitigate. Need to develop substantive handling procedures.
- ACHP The regulations say that FTA 'may invite' and the decision is theirs to make.
- Hui Malama Does that mean the Laura Thielan/Department of Land and Natural Resources should be advocating for the OIBC?
- SHPD FTA consulted with SHPD on this issue and SHPD did not comment. There is a concern because OIBC is not an administrative agency; and a question remains on whether OIBC can bind future city councils and mayor?
- Project Team As long as the archeological survey process is completed well ahead of construction to discover new burials and their disposition, OIBC can effectively deal with this issue.
- OIBC The point we are trying to make is that we have statutory authority. We want to insert stronger language in the PA that requires more intensive surveying to be conducted prior to the start of the project. We also want to be involved in the Section 4(f) analysis, which requires an avoidance alternative analysis be completed.
- SHPD Normally cemeteries and burial sites are not 4(f) properties. TCPs are for Native Hawaiian burials and describe a process on how to react to findings.

Project Team The process will be developed as described in the PA and is ready for review.

NPS Land that contains human remains are not *usually* a 4(f) issue but there are circumstances that, if met, do make the area a 4(f) concern (e.g., Traditional Cultural Properties).

OIBC Between Waiakamilo Road and Ala Moana Center the alignment leads through sandy soils that are known to be popular burial sites. Since 1986, 500 burials have been found between River and Keeaumoku Streets.

SHPD We really want to be specific in the PA as to how burials and other issues found in the corridor will be handled. We want to be sure that burials are treated with equal consideration as other Historic Resources.

NTHP Is this issue being raised because it is anticipated that the density of burials is such that it will be impossible to avoid them?

Project Team Yes, this is the concern, but there is no evidence to support this claim. We take the NEPA process very seriously. Archeological surveys will be completed prior to construction and if remains are found there is a process for handling burials in place. The Alternatives Analysis (AA) was completed in October 2006 and was a public process.

OIBC Yes, but the AA was completed without OIBC's input.

FTA When a local agency does an AA, the FTA is not always involved. The Notice of Intent indicates that environmental analysis has been going on since 2005.

NPS The 4(f) analysis originally completed found only de minimis impacts on Historic Resources and this has since been changed. So can the 4(f) analysis be revised to include burials?

Project Team FTA and the City are in the process of reviewing the revised Section 4(f) evaluation that will be documented in the Final EIS. 33 resources have been identified as adversely affected. There are no eligible burials or archaeological resources identified as it pertains to the 4(f) evaluation. It was determined early on that this alignment and design would attempt to avoid the most likely burial areas as identified from

our analysis. The intent is to cause the least disturbance to burials.

Inventory surveys will be completed and this information will be used in our design. The City will undertake mitigation as necessary to avoid impacting burials.

It should be noted that the City completed archeological studies during the AA phase, which resulted in selection of the current alignment (i.e. avoided Queen Street) and which considered information about burial sites. To claim that the project moved forward without study is inaccurate.

OIBC There have been more findings on Queen Street because there have been more projects in the area. There have not been as many projects along Halekauwila Street so there have been fewer studies done. The absence of studies does not indicate there are no findings. Large epidemic burial sites are known to exist in the sandy areas along the corridor even if their exact locations are unknown at this time.

SHPD Requested soil maps with the project overlaid be provided.

Project Team We will provide the AA Report, Historic and Archaeological Technical Report and associated soil maps to the CPs for review.

A small focus group will be formed to work through issues concerning burials, possible options to avoid them and timing of the Archaeological Inventory Surveys for each of the construction phases. The group will focus on Phase 4 construction.

The composition of this focus group will include: OIBC, SHPD, Hui Malama, Cultural Surveys Hawaii, AIA, and OHA and selected members of the Project Team.

FTA Since most of the burial sites are expected to be found in the Phase 4 construction area, FTA would like completion of the PA studies be done immediately, if possible.

FTA requested that a new Whereas clause be added to the PA noting that "significant burials between Downtown and Ala Moana are likely".

A new stipulation should be added that allows the studies to be done way ahead of construction to allow OIBC the ability to decide how to handle the burials.

Stipulation 3 should be reworded to focus on Phase 4.

FTA reiterated that the Project has selected a Locally Preferred Alternative (LPA) and alignment.

Project Team Burials were not the only consideration when the current alignment was established. However, the Project Team is certainly open to doing more investigation to get a better handle on this matter. It should be noted that during the 2005 AA and Scoping processes, we specifically asked for guidance on alternatives and impacts. In November 2006, the City Council held five public meetings on the process and additional scoping took place.

HHF If the focus group is planning to consider other alternatives or if the alignment changes, HHF would like to be involved.

ACHP The purpose of the focus group will be to determine how the process for handling burial sites can be written into the PA (Stipulation III).

ROLES AND RESPONSIBILITIES: RESOLUTION / ACTION

1. Focus group will convene to work out the details for handling burial sites.

■ II. Traditional Cultural Properties (TCPs)

ACHP Need to define the procedure for conducting the Archaeological Inventory Surveys (AIS). For example: how will City work with consultant? How will study be structured? How will CPs be involved? How will City deal with results? What are the actions? This element will be an ongoing evaluation item and should allow for the process to play out—including time line.

NTHP We are concerned that the participation of Native Hawaiian organizations may be too limited in focus.

HHF Focus is on Native Hawaiian groups but other ethnic groups (e.g., Filipinos) may have an interest as well. HHF suggested changing the PA text to include the CPs.

Project Team The intent is that review will be completed once the document is completed, not during the process.

TRADITIONAL CULTURAL PROPERTIES: RESOLUTION / ACTION

1. Project team will provide detailed procedure for AIS.

▪ IV Design Standards

HHF We reference the Secretary of Interior standards to allow new construction in areas that are in coordination with historic properties. We would like to see this wording strengthened.

Project Team We will discuss with our project architects.

SHPD It is our understanding that we are consulting on the guideway and not the stations.

Project Team This plan encompasses the guideway and the stations.

HHF We would still like to see 35% and 60% drawings – perhaps make updates to the Design Pattern Book.

Project Team We should be able to provide the design drawings as requested.

FTA Perhaps we can put mitigation measures in the ROD. Design/Build (D/B) contractor will follow the Design Pattern Guidebook. FTA's Project Management Oversight Consultant (PMOC) would then provide oversight.

Another provision could be included in the ROD stating that the D/B contractor will follow the SOI design standards.

NTHP Section 4(b) provides information on station design workshops but this text is too vague.

DESIGN STANDARDS: RESOLUTION / ACTION

1. Project team agreed to provide 35% and 60% drawings.
2. Consideration of ROD provisions.

▪ V. Recordation and Documentation

Project Team Some items in this section are broader in scope and others are more specific. The intent is to do contextual studies first so that they can inform what should be done in specifics.

ACHP This section could be used to allow the specific document items to be prioritized based on the results of studies.

Project Team Direct consultation seems to be the preference.

Any feedback on HABS/HALS?

HHF The section says that photos, etc. will remain in the possession of the city; please clarify. Project Team stated that it will be housed at the City's main municipal library.

ACHP Will redline text and submit to CPs for review.

RECORDATION AND DOCUMENTATION: RESOLUTION / ACTION

1. ACHP to provide changes for review.

D. Next Steps

- Next meeting: September 23, 2009 at PB Americas Office, 1001 Bishop Street, Suite 2400 – 8:30 a.m.
- Call in: 1-888-742-8686; ID 3784294